



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Biological Research Faculty & Facility, Inc.

File: B-234568

Date: April 28, 1989

DIGEST

1. Procuring officials enjoy a reasonable degree of discretion in evaluating proposals, and the General Accounting Office will not disturb an evaluation where the record supports the conclusions reached and the evaluation is consistent with the criteria set forth in the solicitation.
2. Protest that agency did not hold adequate discussions is denied where the record demonstrates that the major deficiencies were discussed with the protester.
3. In negotiated procurements award need not be made to the offeror who proposes the lowest cost. Award to higher priced, higher technically-ranked offeror is not objectionable where the solicitation made technical considerations more important than cost and agency reasonably concluded that the technical superiority of the awardee's proposal was worth the additional cost.

DECISION

Biological Research Faculty & Facility, Inc., protests the proposed award of a contract to Biotech Research Laboratories, Inc., under request for proposals (RFP) No. NCI-CP-EB-85619-21 issued by the Department of Health and Human Services' National Cancer Institute for processing and storing biological specimens. Biological Research argues that the agency improperly evaluated the proposals.

We deny the protest.

The RFP, which was issued on April 8, 1988, contemplated the award of a cost-reimbursement, level-of-effort contract. It provided that technical factors were more important than cost and listed three major evaluation areas, all of which were point scored. Cost was not point scored and was

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subordinate to technical factors. The evaluation factors and the total points possible for each were as follows:

Merit of Proposal	600
1. Technical Competence	(400)
2. Experience - Operation	(100)
3. Experience/Data Management	(100)
Personnel	300
Facilities	100

On May 23, the closing date for receipt of initial proposals, the agency received proposals from two offerors, Biological Research and Biotech. As the result of the evaluation of initial proposals, both offerors were included in the competitive range. Biotech, the incumbent contractor, received an initial score of 436 and the protester received 683. Written and oral discussions were conducted with the offerors and both submitted best and final offers (BAFOs) by November 2. While reviewing the BAFOs the agency discovered that in an amendment to the solicitation two of the answers given by the agency to questions about the statement of work were incorrect. The agency therefore issued another amendment correcting the error and requested a second BAFO. Both offerors submitted second BAFOs by the revised date of November 17. Biotech improved its score by 289 points for a total of 725 while the protester lost 53 points for a final score of 630. Biotech proposed costs of \$3,172,237 and the protester proposed costs of \$2,716,307. The source selection authority chose Biotech for award even though it proposed higher costs since he felt the difference in cost was outweighed by the difference in technical merit.

Biological Research disputes the agency's evaluation of its proposal and believes that the increases in the awardee's initial score after negotiations were unjustified and evidence of the evaluator's bias in favor of the awardee.

In reviewing protests against the propriety of an agency evaluation of proposals, we will not independently evaluate those proposals. Ira T. Finley Investments, B-222432, July 25, 1986, 86-2 CPD ¶ 112. Rather, the determination of the relative desirability and technical adequacy of the proposals is primarily a function of the procuring agency which enjoys a reasonable range of discretion in proposal evaluation. AT&T Technology Systems, B-220052, Jan. 17, 1986, 86-1 CPD ¶ 57. We will question an agency's technical evaluation where the record shows that the evaluation does

not have a reasonable basis or is inconsistent with the evaluation criteria listed in the RFP. See American Educational Complex System, B-228584, Jan. 13, 1988, 88-1 CPD ¶ 30. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. Id. In our view, the record here shows that the agency's evaluation was reasonable and consistent with the evaluation criteria.

Biological Research's first argument concerns the different scores received by the offerors on their initial and revised proposals under the technical competence evaluation criterion. The record shows that the evaluators raised the protester's score 3 points, from 267 to 270 while they raised Biotech's score 127 points, from 153 to 280. The protester argues that it deserved more of an increase under this criterion in view of its extensive responses to the agency's questions. On the other hand, the protester states that the large increase in the awardee's score was . unwarranted.

The agency responds that the initial technical scoring was conducted by an outside technical review group. The agency's evaluators then approved the group's evaluation of the initial proposals and after written and oral discussions rescored the BAFOs using the initial review group's score as a baseline. According to the agency, the awardee's initial proposal, while sufficient, lacked detail and consequently was scored low. The record indicates that during oral and written negotiations, the awardee provided considerably more detailed information which resulted in the substantial increase in its score.

We do not believe the record supports a conclusion that the agency was unreasonable in its evaluation under the technical competence factor. A review of the proposals indicates that the awardee responded at length to the evaluators' technical questions, and demonstrated the ability to handle large volumes of biological materials. Further, while the increase in the awardee's score was substantial, its final score was only 10 points higher than the protester's. On the other hand, the evaluators found the additional information provided by the protester during discussions merited only a 3-point increase since in their view the firm's responses added only minor details on the processing of specimens. The protester has not indicated why it believes its responses merited a higher score and we find nothing in the record which provides a basis for us to question the agency's judgment in this regard.

Biological Research also disputes the agency's determination that it was weak under the experience-operation evaluation factor. The protester states that it proposed 70 percent of the incumbent's staff and therefore had ample experience.

The record shows that the evaluators' major concern in this area was the protester's lack of experience in managing a large-scale biospecimen processing laboratory and repository. Although the awardee's proposal of incumbent personnel was noted as a strength under the personnel evaluation factor, in the experience-operation area the agency was primarily evaluating company experience. We see nothing unreasonable in evaluators ranking an incumbent with several years of experience operating a large volume facility higher than a company which has demonstrated no such experience.

Under the data management experience factor, the protester argues that the agency could not have reasonably given the awardee a 35-point increase in its score since the agency is to provide the data management system to the successful offeror. We fail to see how the agency providing the system necessarily limits the awardee's score since what was to be evaluated was the firm's experience in managing the system not in creating it or setting it up. Moreover, we note that the protester scored 84 in this area, 2 points higher than the awardee. The record shows that in the evaluators' view, the lack of detail in the awardee's initial proposal was corrected by its discussion responses which demonstrated familiarity with manual and computer data management systems. We think that the record reasonably supports the agency's judgment here.

Biological Research also argues that the agency improperly downgraded its offer because the firm specified a 40 percent time commitment for its proposed principal investigator. The protester maintains that since the RFP did not require a minimum time commitment for the investigator, it cannot be downgraded for proposing a 40 percent commitment. Additionally, Biological Research contends that it was not informed of this alleged weakness during discussions.

Under the personnel evaluation factor, Biological Research received 170 out of 300 possible points while Biotech received 205. The record shows that the protester was downgraded primarily for proposing a part-time commitment for the position of principal investigator. The evaluators were very concerned that the protester offered only a 40 percent commitment for the project's key position. The

awardee on the other hand proposed a full-time project manager.

While it is true that the RFP did not require a specific time commitment for the principal investigator, we do not think it was unreasonable for the agency to be concerned that the protester proposed that an individual devoting less than half of his time to the project be responsible for day-to-day operation of the project. See Tracor Marine, Inc., B-226995, July 27, 1987, 87-2 CPD ¶ 92.

Concerning the protester's allegation that the agency did not hold discussions on this matter, the record indicates that as part of the written negotiations Biological Research was asked to "justify the proposed commitment of only 25 percent for the principal investigator." The protester responded in writing that it did not see any need for the principal investigator to devote more than 25 percent of his time to the project however if the agency "feels strongly that his time should be increased," the firm had "no serious objections" to increasing it to 40 percent. Additionally, the record shows that the protester was asked to respond in writing to questions raised during oral negotiations concerning the adequacy of the principal investigator's control over the project, his responsibilities, and the overall management of the project. We think this constitutes ample notice to the protester that the agency was concerned about the principal investigator's part-time commitment.

Agencies generally must conduct meaningful written or oral discussions with all offerors in the competitive range advising them of deficiencies in their proposals and offering the opportunity to submit revised proposals. In order for the discussions to be meaningful agencies are required to lead offerors into areas of their proposals considered deficient. Varian Associates, Inc., B-228545, Feb. 16, 1988, 88-1 CPD ¶ 153. It is clear from the above that the agency did so here.

Biological Research further complains that under the facilities area, it received only an 8 point increase in its score as a result of discussions while the awardee received a 25-point increase. The protester argues that it proposed a facility that could be configured to meet the needs of the project and believes the awardee merely described the existing system.

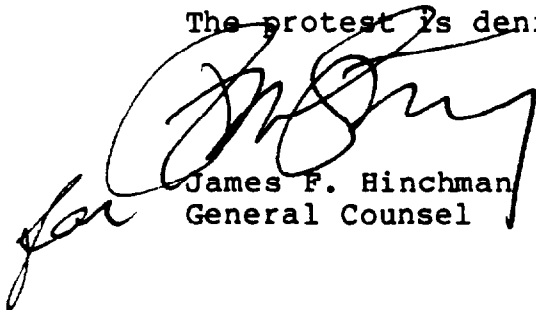
A review of the awardee's proposal indicates that it did describe the existing system in detail and addressed future expansion needs. We see no reason for the evaluators to

downgrade the awardee because it was able to propose the existing system. The evaluators did not note any deficiencies in that system and increased the awardee's score because it provided detailed information that was lacking in its initial proposal.

Additionally, we find no support in the record for Biological Research's allegation of bias. The protester suggests that the agency evaluators were biased because they scored the awardee significantly higher than the outside technical evaluators did in their initial review of the proposals. The only evidence of bias alleged by the protester is the evaluators' scoring of the proposals and we have not found that to be unreasonable. Consequently, we have no basis upon which to conclude that the agency was biased against the protester.

Finally, the protester argues that it would be in the government's best interest to make award to it, since it proposed lower costs than the awardee. We disagree. In a negotiated procurement, the contracting agency has broad discretion in making cost/technical tradeoffs, the extent of which is governed only by the tests of rationality and consistency with the established evaluation criteria. Tracor Marine, Inc., B-226995, July 27, 1987, 87-2 CPD ¶ 92. We have upheld awards to higher rated offerors with significantly higher proposed costs where the agency reasonably determined that the cost premium involved was justified considering the technical superiority of the selected offeror's proposal. University of Dayton Research Institute, B-227115, Aug. 19, 1987, 87-2 CPD ¶ 178. Here, the RFP specifically stated that cost was subordinate to technical considerations. The agency determined Biotech's proposal to be technically superior to the protester's and we have not found that technical determination to be unreasonable.

The protest is denied.



James F. Hinchman
General Counsel